

CHAPTER 6. STATE BOARD OF EDUCATION RULEMAKING PROCESS

SUBCHAPTER 1. GENERAL PROVISIONS

6A:6-1.1 Scope

This chapter sets forth the rulemaking process for the State Board of Education of New Jersey pursuant to Administrative Procedure Act (APA), N.J.S.A. 52:14B-1 et seq., as amended under P.L. 2001, c. 5. This chapter also establishes rules pursuant to N.J.S.A. 52:14B-4(f) that apply to all persons interested in making a petition to adopt a new rule or amend or repeal an existing rule in Title 6 or 6A.

6A:6-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Act" means the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

"Department" means the New Jersey Department of Education.

"Commissioner" means the Commissioner of the New Jersey Department of Education.

"Discussion level document" means a draft of a summary memo and rule text to be discussed by the State Board prior to the notice of proposal.

"New Jersey Register" means the journal of New Jersey State agency rulemaking published by the Office of Administrative Law pursuant to N.J.S.A. 52:14B- 7(b).

"Notice of proposal" means that document described in N.J.A.C. 1:30-5.1 which must be submitted to the Office of Administrative Law for filing and then published in the New Jersey Register and distributed to the Legislature and interested persons. When it is presented to the State Board at a public meeting, a notice of proposal includes a summary memo and rule text.

"Notice of adoption" means that document described in N.J.A.C. 1:30-6.1 which must be submitted to the Office of Administrative Law for filing and then published in the New Jersey Register. When it is presented to the State Board at a public meeting, a notice of adoption includes a summary memo and rule text and a comment/response form which contains the Department's responses to comments received during the comment period.

"Person" means any individual, association, board, venture, partnership, corporation, organization, institution and governmental instrumentality recognized by law for any purpose whatsoever.

"Policy discussion paper" means a paper prepared by Department staff, which sets forth the broad policy issues related to a proposed new rule, amendment or repeal. "Pre-proposal" means a preliminary proceeding for the purpose of eliciting ideas, views and comments of interested persons on a contemplated rulemaking proceeding, pursuant to N.J.A.C. 1:30-5.3(b).

"Public hearing" means a legislative type proceeding conducted either as part of a rulemaking or to consider a potential rulemaking which affords the public an opportunity to present the promulgating agency oral and written comments, arguments, data and views on the rulemaking or the contemplated rulemaking.

"Public testimony session" means a Department forum at which a panel of State Board members has the opportunity to listen to comments from interested persons regarding new rules, amendments and/or repeals.

"Rulemaking process" means the systematic process followed by the State Board for the development and promulgation of rules. The process includes those activities that the State Board deems necessary to develop and promulgate rules, including but not limited to those activities designed to meet the requirements of the Administrative Procedure Act (APA) and N.J.A.C. 1:30, Rules for Agency Rulemaking.

"Stakeholder" means any individual, group or association that will be directly impacted by the force and effect of the proposed new rule, amendment or repeal.

"State Board" means the New Jersey State Board of Education.

"Work session" means a State Board forum, conducted in compliance with the Open Public Meetings Act, N.J.S.A. 10:4-1 et seq., at which the State Board and the Commissioner discuss a policy discussion paper, pre-proposal or other issues that may require an in depth discussion.

1. The State Board may also at a work session, take formal action to vote on an item of action requiring notice to the public pursuant to the Open Public Meetings Act, N.J.S.A. 10:4-1 et seq.

SUBCHAPTER 2. NOTICE OF ANTICIPATED RULEMAKING ACTIVITY

6A:6-2.1 Notice of State Board meeting dates and rulemaking activity

(a) The State Board shall adopt annually by resolution a calendar of meeting dates that include the State Board's public monthly meetings, work sessions and public testimony sessions. The Department will post the calendar of meeting dates on the Department's website at <http://www.state.nj.us/education/>. The Department will distribute the calendar of meeting dates to school districts, the news media maintaining a press office to cover the State House Complex, education associations and other interested persons.

(b) The State Board shall provide notice of new rules, amendments or repeals to be discussed or acted upon by the State Board on its agenda for each public monthly meeting. In addition, the Department will post a schedule on the Department's website at <http://www.state.nj.us/education/> of new rules, amendments and repeals to be discussed or acted upon by the State Board.

(c) The Department shall publish in the New Jersey Register quarterly calendars of its anticipated proposed rulemaking activities pursuant to N.J.A.C. 1:30-3. These calendars shall be amended as necessary in accordance with N.J.A.C. 1:30-3.2.

1. The Department will include a copy of the quarterly rulemaking calendar on the Department's website at <http://www.state.nj.us/education/>.

2. The Department will provide notice of the availability of its quarterly rulemaking calendar for the fee established in accordance with the copying fee schedule at N.J.A.C. 1:30-1.9(a), in the same manner as it publicizes its proposed rulemakings pursuant to N.J.A.C. 6A:6-3.1(d) and 1:30-5.2, to inform those persons most likely to be affected or interested by the proposed rules.

3. As an alternative to calendar publication requirements under this subsection, the Department may determine to use one of the five calendar exceptions available to it pursuant to N.J.A.C. 1:30-3.

SUBCHAPTER 3. STATE BOARD RULEMAKING PROCESS

6A:6-3.1 State Board rulemaking process

(a) The Department may prepare a policy discussion paper and present it to the State Board and to stakeholders for input before documents related to a new rule, amendment or repeal are presented to the State Board for consideration.

(b) The Department may develop a discussion level document for any new rule, amendment or repeal and present such document to the State Board. The State Board may decide to:

1. Place the discussion level document on the State Board's monthly agenda at one or more public meetings in accordance with the Open Public Meetings Act (N.J.S.A. 10:4-1 et seq.);

2. Provide a written comment period of at least 30 days for the discussion level document; and/or

3. Take oral testimony at one or more public testimony sessions scheduled after the State Board discusses the discussion level document at a public meeting and before the notice

of proposal is published in the New Jersey Register pursuant to the Act. The State Board also accepts written comment at this time.

(c) The State Board shall determine, based upon a recommendation by the Commissioner, at a public meeting to publish a notice of proposal in the New Jersey Register to promulgate new rules, amendments or repeals pursuant to the Act.

1. The State Board may take oral testimony at one or more public testimony sessions scheduled after the proposal is discussed at a public meeting.

2. The State Board may choose to extend the comment period on a notice of proposal.

(d) The State Board, pursuant to N.J.A.C. 1:30-5.2, will provide additional notice of the proposed rulemaking at least 30 days prior to the close of the comment period using the following methods:

1. The Department will distribute either the notice of proposal, as filed, or a statement of substance of the proposed action to those persons who have made timely requests of the State Board for notice of its rulemaking activity;

2. The Department will distribute the notice of proposal, as filed, or a statement of the proposed action to the news media maintaining a press office in the State House Complex;

3. The Department will post the notice of proposal, as filed, or a statement of the substance of the proposed action on the Department website at: <http://www.state.nj.us/education/>; and

4. The Department will undertake an additional method of publicity other than publication in the New Jersey Register, pursuant to N.J.A.C. 1:30-5.2, through distribution to a list of stakeholders as defined in N.J.A.C. 1:30-1.2.

(e) The State Board, based upon a recommendation by the Commissioner, shall discuss and vote at a public meeting to publish a notice of adoption in the New Jersey Register to promulgate new rules, amendments or repeals pursuant to the Act.

(f) The President of the State Board or, in the President's absence, the Vice-President, in consultation with the Commissioner, may extend the comment period on a proposal published in the New Jersey Register for an additional 30 days. Sufficient public interest for the purposes of extending the comment period, pursuant to N.J.A.C. 1:30-5.4, shall be demonstrated if the President of the State Board or, in the President's absence, the Vice President, in consultation with the Commissioner, determines that, within 30 days of the publication date of the proposal, any of the following criteria have been satisfied:

1. Comments received reveal a previously unrecognized impact on a regulated party;

2. Comments received go beyond the scope of comments previously considered by the State Board during the rulemaking process related to the notice of proposal; or

3. Comments received raise unanticipated issues related to the notice of proposal.

(g) In determining whether sufficient public interest has been demonstrated for purposes of conducting a public hearing pursuant to N.J.A.C. 1:30-5.5, the President of the State Board or, in the President's absence, the Vice-President, in consultation with the Commissioner, shall consider the application of an interested person that has been submitted on a form prescribed by the Commissioner. Such application shall be submitted within 30 days following the publication of the notice of proposal in the New Jersey Register.

1. A person interested in a public hearing on a notice of proposal shall submit an application, on a form prescribed by the Commissioner, to the State Board Office, New Jersey Department of Education, River View Executive Plaza, Building 100, PO Box 500, Trenton, NJ 08625-0500. The application shall contain the following information:

i. The person's name, address, phone number, agency of association (if applicable);

ii. The citation and title of the proposed rule and the date the notice of proposal was published in the New Jersey Register; and

iii. The reasons a public hearing regarding the notice of proposal is considered necessary pursuant to (h) below.

(h) Sufficient public interest for the purpose of holding a public hearing, pursuant to N.J.A.C. 1:30-5.5, shall be demonstrated if upon reviewing the application the President of the State Board or, in the President's absence, the Vice-President, in consultation with the Commissioner, determines within 30 days of the publication date of the proposal that additional data, findings and/or analysis regarding the notice of proposal are necessary for the State Board to review prior to adoption in order to ensure that the notice of proposal does not violate the intent of the statutory authority.

(i) A public hearing on a notice of proposal shall be conducted in accordance with the provisions of N.J.A.C. 1:30-5.5.

1. The Commissioner shall present the recommendations of the hearing officer at a State Board of Education public meeting, pursuant to the Open Public Meetings Act, N.J.S.A. 10:4-1 et seq., and the State Board shall act upon the recommendation of the Commissioner to accept, reject or modify the hearing officer's recommendations.

2. The recommendations of the hearing officer, and the State Board's decision to accept, reject or modify any recommendations shall be summarized and published in the New Jersey Register pursuant to N.J.A.C. 1:30-5.5(g).

SUBCHAPTER 4. PETITIONS FOR RULEMAKING

6A:6-4.1 Preparation of rulemaking petition by petitioner

(a) An interested person may petition the State Board to adopt a new rule, amend or repeal an existing rule set forth in Title 6 or 6A.

(b) The petitioner shall submit the following information on a rulemaking petition form prescribed by the Commissioner:

1. The name, address and phone number of the petitioner;
2. The substance or nature of the rulemaking request;
3. The reasons for the request and the petitioner's interest in the request; and
4. References to the authority of the agency to take the requested action.

(c) The petitioner may include the text of the proposed new rule, amended rule or repealed rule as part of the petition.

(d) The petitioner shall submit the rulemaking petition form to: State Board Office, New Jersey Department of Education, River View Executive Plaza, Building 100, P.O. Box 500, Trenton, NJ 08625-0500.

6A:6-4.2 Department response to a petition for rulemaking

(a) The Department will file a notice of petition with the Office of Administrative Law for publication in the New Jersey Register within 15 days of receipt of the rulemaking petition pursuant to N.J.A.C. 1:30-4.1(c). The notice of petition shall include:

1. The name of the petitioner;
2. The substance or nature of the rulemaking action which is requested;
3. The problem or purpose identified by the petition; and
4. The date the petition was received.

(b) Within 60 days of receipt of a rulemaking petition, the President of the State Board or, in the President's absence, the Vice President, in consultation with the Commissioner, shall determine the course of action for responding to the petition pursuant to N.J.A.C. 1:30-4.2. The course of action shall be either to:

1. Deny the petition, in which case the Commissioner shall provide a written statement of the reasons to the petitioner and include such reasons in the notice of action. The State

Board President and the Commissioner shall inform the State Board if such an action is taken on a petition;

2. Grant the petition and initiate a rulemaking proceeding within 90 days of granting the petition. The State Board President and the Commissioner shall inform the State Board if such an action is taken on a petition; or

3. Refer the matter for further deliberations, the nature of which shall be specified to the petitioner and in the notice of action and which shall conclude within 90 days of such referral. Upon conclusion of such further deliberations, the State Board President in consultation with the Commissioner shall either deny the petition or grant the petition and initiate a rulemaking proceeding within 90 days. The Commissioner shall mail the results of these further deliberations to the petitioner and submit the results to the Office of Administrative Law for publication in the New Jersey Register.

(c) Within 60 days of receiving the rulemaking petition, the Department shall mail to the petitioner, and file with the Office of Administrative Law for publication in the New Jersey Register, a notice of action on the petition pursuant to N.J.A.C. 1:30-4.2(b). The notice of action shall include:

1. The name of the petitioner;
2. The New Jersey Register citation for the notice of petition;
3. Certification by the Commissioner that the petition was duly considered pursuant to law; and
4. The nature or substance of the action upon the petition.

(d) If the State Board fails to act on the rulemaking petition within the time frames set forth above and in N.J.A.C. 1:30-4.2, the petitioner may request a public hearing by submitting a request, in writing, to the Office of Administrative Law pursuant to N.J.A.C. 1:30-4.3.

APPENDIX

STATE BOARD OF EDUCATION RULEMAKING PROCESS

The Department may distribute a policy discussion paper to State Board and the stakeholders.

Feedback to Commissioner about the policy discussion paper is received from the State Board at a work session and also through written or oral comment from the stakeholders.

The State Board considers draft rule language at First Discussion level at a State Board monthly meeting.

The State Board considers draft rule language at Second Discussion level at a State Board monthly meeting.

The State Board may add an additional Discussion level of draft rule language at its discretion.

A public testimony session is held six weeks following First Discussion level consideration of draft rule language. Written comment is also accepted.

The State Board considers the Proposal level rule language at a State Board monthly meeting for its approval to publish the proposal in the New Jersey Register.

The notice of proposal is published in the New Jersey Register.

A 30 or 60-day written comment period is available for the public to react to the published proposal.

A 30-day written comment period is only permitted under the rulemaking calendar exceptions located at N.J.A.C. 1:30-3.3(a)1 through 4

A public testimony session may be held six weeks following the Proposal level consideration of rule language.

Adoption level rule language is considered by the State Board for its approval to publish the adoption in the New Jersey Register.

The notice of adoption is published in the New Jersey Register to establish the effective date of the adopted rule.